

3:22-mj-00206

DISTRICT OF OREGON: ss,

AFFIDAVIT OF GUY GINO

Affidavit in Support of a Criminal Complaint

I, Guy Gino, being first duly sworn, hereby depose and state as follows:

Introduction and Agent Background

1. I am a Special Agent (SA) with Homeland Security Investigations (HSI) and have been so employed since 2003. I am a law enforcement officer of the United States within the meaning of Title 18, United States Code, Section 2510(7) and I am authorized by law to conduct investigations and to make arrests for felony offenses. I am currently assigned to the Assistant Special Agent in Charge, Portland, Oregon. Prior to this, I was employed as a U.S. Border Patrol Agent and have been a federal law enforcement officer since September 1996. I am authorized and assigned to investigate violations of federal laws, including 21 U.S.C. §§ 841(a)(1), 846, 848, and 843(b) of the Drug Abuse Prevention and Control Act of 1970; that is, possession with intent to distribute and the distribution of controlled substances, conspiracy to commit such offenses, the operation of a continuing criminal enterprise, and the use of a communication facility to facilitate a felony violation of the Drug Abuse Prevention and Control Act of 1970. During my tenure as a federal law enforcement officer, I have investigated and/or participated in investigations of conspiracy, money laundering, narcotics trafficking, fraud, smuggling and theft. I have also acquired knowledge and information about the illegal drug trade and the various means and methods by which it is furthered including through the use of computers, smart phones, digital media and the Internet from formal and informal training, other law enforcement officers and investigators, informants, individuals I have arrested and/or interviewed, and from my participation in other investigations. I am currently detailed to the High Intensity Drug

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Trafficking Area (HIDTA) Interdiction Taskforce (HIT) located at the Portland Police Bureau's (PPB) Narcotics and Organized Crime Division (NOC).

2. This affidavit is based upon a joint investigation, conducted by the HIDTA Interdiction Task Force (HIT), Portland Police Bureau (PPB), and Homeland Security Investigations (HSI).

Purpose of Affidavit

3. This affidavit is submitted to support a criminal complaint and arrest warrant for Herbert Olandon WADDELL, a Black male, date of birth xx/xx/1960 (hereinafter referenced as "WADDELL"), for committing the crime of Distribution and Possession with the Intent to Distribute a Controlled Substance (Fentanyl), in violation of Title 21, United States Code, Section 841(a)(1).

4. I have obtained the facts set forth in this affidavit through my personal participation in the investigation described below; from oral and written reports of other law enforcement officers; and, from records, documents and other evidence obtained during this investigation. I have obtained and read official reports prepared by law enforcement officers participating in this investigation and in other related investigations.

5. I know that drug traffickers are increasingly selling counterfeit M30 prescription pills that are manufactured with Fentanyl, a Schedule II controlled substance. These counterfeit pills are designed to replicate real 30 mg Oxycodone pills, which are round, blue in color, and stamped with an "M" and "30" on them. Drug dealers regularly counterfeit these pills and, while attempting to replicate the round shape, the blue color, and the stamp of "M" and "30," they are instead manufacturing these pills with Fentanyl as the active ingredient. The counterfeit pills, while looking roughly similar to the real thing can sometimes be distinguished based upon their

appearance. The counterfeit M30 pills often have a different shade of blue than the real thing and sometimes they are even manufactured in different colors, the edges of the pills and the stamped impressions are often rough and lack the precision of a real 30 mg Oxycodone Hydrochloride pill, and sometimes the counterfeit pills will crumble easily under pressure. I have seen and seized hundreds of thousands of these counterfeit M30 pills and, of the samples submitted for forensic analysis, lab reports have always confirmed the presence of Fentanyl within them. I also know it has become common knowledge in the drug trafficking community that these pills contain Fentanyl. I know a user amount of a counterfeit M30 pill is often one pill at a time, which can either be ingested or burned and inhaled. Depending on the level of addiction, some addicts will use between 5 to 15, or more pills in a day. These pills can sell on the street to a user for between \$2 to \$10, or more. I know that the possession of more than 100 of these counterfeit M30 pills is indicative of possession for purposes of further distribution.

Summary of Probable Cause

6. On November 16, 2022, as part of an investigation into Fentanyl dealers operating in the downtown Portland, Oregon area, the HIDTA Interdiction Task Force (HIT), Portland Police Bureau, Multnomah County Sheriff's Office (MCSO) Special Investigations Unit (SIU), and Multnomah County Department of Community Justice (DCJ) were conducting surveillance in areas of downtown Portland where numerous open-air drug transactions have been observed and reported.

7. At approximately 10:00 AM, SIU MCSO Deputy Jarrett Miller observed what he described as a hand-to-hand drug transaction between two individuals in the area of NW 5th Avenue and NW Davis Street, in Portland, Oregon. Deputy Miller described the dealer as a black male wearing a bright yellow jacket and was wearing a black hoodie on his head. Deputy Miller

then observed the dealer receive cash from the customer which was placed in the dealer's right hand. Deputy Miller then observed the dealer take a green container from his front pocket while still holding the cash and in his right hand. The dealer then used his left hand's fingers to pluck what appeared to be pills from the container and place them out in the customers hand. Once this was done the customer walked away. As this was occurring, Deputy Miller was radioing the surveillance team as to what he was observing.

8. Miller provided the dealer's location and description to the other surveillance units and followed the buyer as he walked away. Deputy Miller observed the buyer meet with two other individuals briefly and then proceed to walk down the sidewalk.

9. PPB Officers Kirby-Glatkowski and Flohr maintained surveillance on the dealer who remained in the area of NW 5th Avenue and NW Davis Street between 4th and 5th avenues. Officer Kirby-Glatkowski observed that as they drove up to contact the dealer in their marked vehicle, they did not see anyone else in the area. Upon their approach, the dealer immediately started to walk away from them and a tan tactical bag on sidewalk 5-6 feet from him. The dealer was arrested and Officer Kirby-Glatkowski read the dealer, who was identified as Herbert Olandon WADDELL, his *Miranda* rights. Kirby-Glatkowski asked WADDELL if he understood his rights to which WADDELL replied "of course." A search incident to arrest was conducted on WADDELL. While searching WADDELL, Officers located a green Trident gum container with a green lid in his front left pants pocket that contained approximately 50 blue M30 pills. WADDELL also had a baggie of M30 pills in his left sock, a prescription bottle containing unknown pills, as well as a couple M30's in his jacket pocket, an Altoids tin with apparent Xanax bars in his front left pants pocket, and some loose money found in his front pants pocket.

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10. WADDELL told Officer Kirby-Glatkowski that the pills were his for personal use only. Officer Flohr observed a tan backpack on the ground approximately 6 feet away from WADDELL and asked WADDELL about the backpack. WADDELL told the Officers initially that he shares the backpack with someone else and the other person might have put Fentanyl in it. WADDELL then told Officers that the bag was not his, that there shouldn't be any Fentanyl in it but it does contain some paperwork with his name on it. Officer Kirby-Glatkowski asked for consent to search the bag. WADDELL refused to give consent to search the bag.

11. As the arrest of WADDELL was occurring, the buyer who was being watched by Deputy Miller was contacted by PPB Bike Officers Arnold and DiMatteo. The buyer was identified. Officer Arnold observed a single blue pill in buyer's left hand. Officer DiMatteo informed the buyer of his *Miranda* rights and the buyer stated that he understood. When questioned as to where he received the blue pill, the buyer stated that he had just purchased it from an individual that was "probably black." The buyer was issued a citation and released.

12. WADDELL was transported to Central precinct by Officers Kirby-Glatkowski and Flohr. TFO Devlin transported the backpack to Central Precinct. Both WADDELL and the tan backpack was then taken upstairs to the PPB's Narcotics and Organized Crime unit. WADDELL was placed into the NOC holding cell while the seized narcotics were weighed and tested. The 158 M30 pills found in WADDELL's possession tested positive for Fentanyl.

13. At approximately 5:00 pm, TFOs Castaneda and Devlin checked on WADDELL in the NOC holding cell and offered him a drink. WADDELL told them he didn't want anything to eat or drink. He then told the Officers that he didn't know "what you all put in my backpack" but said "I saw an Officer take my backpack off the sidewalk and put it into a police car."

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14. A state search warrant for the backpack was authorized by Multnomah County Circuit Court Judge Jenna Plank. A search of the backpack was conducted which recovered two digital scales with drug residue, approximately 1 gram of Methamphetamine, approximately 2 grams of Powdered Fentanyl, and 1 blue Fentanyl pill. Also recovered inside the backpack were photocopies of WADDELL's Oregon driver's license as well as other documents bearing his name including old prescription bottles and a Zoraki M925 9mm Full Auto Blank Pistol with the orange tip removed. This is not a functionable firearm, rather it is a replica that cannot fire anything other than blanks.

Conclusion

15. Based on the foregoing, I have probable cause to believe, and I do believe, that Herbert Olandon WADDELL, has committed the crime of Distribution and Possession with the Intent to Distribute a Controlled Substance (Fentanyl), in violation of Title 21, United States Code, Section 841(a)(1). I therefore request that the Court issue a criminal complaint and arrest warrant for Herbert Olandon WADDELL.

16. Prior to being submitted to the Court, this affidavit, the accompanying complaint, and the arrest warrant were all reviewed by Assistant United States Attorney Scott Kerin. AUSA

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Kerin advised me that in his opinion the affidavit and complaint are legally and factually sufficient to establish probable cause to support the issuance of the requested criminal complaint and arrest warrant.

By phone pursuant to Fed R. Crim. P. 4.1 JVA

Guy Gino Special Agent
Homeland Security Investigations

Subscribed and sworn in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephone at 8:29 a.m. on November 17, 2022.



HONORABLE JOHN V. ACOSTA
United States Magistrate Judge

JVA

HONORABLE JOHN V. ACOSTA
UNITED STATES MAGISTRATE JUDGE